

NOT FOR PUBLICATION

NO. 25232

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee, v.
RANDOL K. NGUM, Defendant-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 02-1-0023)

MEMORANDUM OPINION

(By: Burns, C.J., Watanabe and Lim, JJ.)

Randol Kahakukaho'omanawanui Ngum (Ngum or Defendant) appeals the July 5, 2002 amended judgment of the circuit court of the first circuit¹ that convicted him, as charged and upon a jury's verdict, of one count of promoting a dangerous drug in the third degree² and one count of unlawful use of drug paraphernalia,³ and sentenced him to concurrent terms of five years in prison with a mandatory minimum term of one year and eight months on the former count as a repeat offender. We affirm.

¹ The Honorable Dexter D. Del Rosario, judge presiding.

² Hawaii Revised Statutes (HRS) § 712-1243(1) (1993) provides that, "A person commits the offense of promoting a dangerous drug in the third degree if the person knowingly possesses any dangerous drug in any amount."

³ HRS § 329-43.5(a) (1993) provides in pertinent part that, "It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this chapter."

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I. Background.

On January 29, 2002, Ngum filed a motion to suppress certain items of evidence; namely, a "glass cylindrical pipe with a bulbous end containing a residue of a white substance" and the residue itself. Ngum contended the police discovered the pipe in his pants pocket as a result of an investigative stop that lacked the constitutionally required basis of reasonable suspicion, which violated his rights under article I, section 7 of the Hawai'i State Constitution and the Fourth and Fourteenth Amendments to the United States Constitution.⁴

Sonny Lim, a two-and-a-half year veteran of the Honolulu Police Department (Officer Lim), testified at the March 6, 2002 hearing on the motion to suppress. At the time of the hearing, he had been assigned to the District 6 Waikiki unit for about eight or nine months and had been patrolling the Hobron Lane area (Sector 1 of District 6) for approximately twenty to

⁴ The Fourth Amendment to the United States Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article I, section 7 of the Hawai'i State Constitution provides:

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches, seizures and invasions of privacy shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized or the communications sought to be intercepted.

thirty working days. Officer Lim remembered that, during the three-month period ending December 23, 2001, he had been involved in about eight to ten investigations of unauthorized entry into motor vehicle (UEMV)⁵ within a one-block radius of Hobron Lane and Ena Road alone.

On that date at about 11:25 a.m., Officer Lim was driving his blue-and-white, marked police car in Sector 1, "just patrolling an area known to me as being an area of a lot of vehicle break-ins. So I was just driving around." As he was driving east on Hobron Lane towards Ena Road, Officer Lim saw a male he identified in court as Ngum heading east on the opposite side of the road, "walking on the roadway, which caught my eye. It is a narrow road. And for somebody to be walking on the roadway is kind of unusual." When asked what he meant by "narrow road," Officer Lim explained, "Well, there's one lane going both directions, east and west. And there's parked cars on both sides of the lane also. So when a pedestrian walks on the roadway, it's quite noticeable because he's walking between cars, cars that are moving and cars that are parked." Officer Lim remembered that the sidewalk on both sides of the road was unobstructed.

Officer Lim noticed Ngum looking into the driver's side

⁵ HRS § 708-836.5(1) (Supp. 2003) provides that, "A person commits the offense of unauthorized entry into motor vehicle if the person intentionally or knowingly enters or remains unlawfully in a motor vehicle with the intent to commit a crime against a person or against property rights."

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window of each vehicle he passed. Ngum would stop and pause briefly for a look into each car. After Ngum had done this with five vehicles in a row, Officer Lim "yelled at him to get off the road. I asked him basically, what are you doing walking on the road?" Ngum replied, "I'm just walking." As Ngum turned to reply, Officer Lim recognized him as a UEMV suspect whose picture was on the board in the District 6 squad room. Ngum then looked away and cut between two cars to walk on the sidewalk.

Officer Lim recalled, "Well, I mean for somebody to say I'm just walking, you know, it's unusual for me to think why is it that they're walking down the roadway versus the sidewalk which was clear and unobstructed? So and at the same time I knew he was in a violation." Because of his concern, Officer Lim looked for a place to pull over in order to approach Ngum and "find out further what it was he was doing." As he was looking for a place to park, Officer Lim saw Ngum walk at a faster pace up Ena Road towards Kalakaua Avenue. As he walked, Ngum shed a gray sweatshirt, which revealed the basketball jersey he was wearing underneath.

By the time Officer Lim finally was able to pull over, Ngum had reached the intersection of Ena Road and Kalakaua Avenue and was waiting at the crosswalk. Officer Lim approached on foot and was about twenty feet away when he told Ngum, "come over here, I need to talk to you." Ngum looked at Officer Lim, but just turned away and started to cross the street. Officer Lim

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jogged over and repeated his command. Ngum's response, according to Officer Lim, was as follows: "He goes what? And then he tried to walk away again. So then finally I just grabbed him by the arm and said I need to talk to you. And then that's when he stopped."

Officer Lim told Ngum why he was stopping him. "I told him I want to find out what it was that he was doing back there, why he was walking in the roadway basically. And, you know, to me it appeared that he was casing cars. That's what my initial observation was." Officer Lim asked Ngum for his name, birth date and social security number. Ngum did not produce any identification, but told Officer Lim his name. "He gave me Randol Ngum. And I asked him to spell his last name. And he said N U M." Ngum also gave Officer Lim his birth date and social security number.

The encounter lasted only about three minutes. "So upon getting his information, identifying who he was, I just basically asked him what he was doing. And he says well, I dropped money on the roadway. And I was looking for money that I dropped on the roadway. So with that, I basically said well, you know, okay, that's fair to me. If he would have said well, I have the right to walk on the roadway or something, or gave me a smart answer, I said [sic] have cited him. But he didn't. So I let him go."

Officer Lim went back to his patrol car and ran a "rap

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warrant check" on Ngum. Officer Lim spelled out Ngum's name as Ngum had given it to him. The warrant check came back negative. Then, however, another police officer informed Officer Lim the name was spelled "Ngum," and that "rang a bell because when I was looking at the board, this guy had a really unusual last name." Thereupon, Officer Lim ran another warrant check, which came back positive. Officer Lim then drove around looking for Ngum and stopped him on Kalakaua Avenue. Officer Lim confirmed the warrant and arrested him. In the course of the following pat-down search, Officer Lim detected what felt like a pipe with a bulb at one end in the front left pocket of Ngum's polyester pants. Officer Lim did not remove the object, because Ngum was handcuffed and Officer Lim had already checked the inside of his patrol car as a precaution. When asked whether Ngum made any "spontaneous utterances," Officer Lim replied, "Yeah. He said the pants weren't his, is basically what he said." Officer Lim took Ngum to the main police station, where the receiving officer later told Officer Lim that a pipe had been found on Ngum. When shown the pipe, Officer Lim recognized it as a pipe used to smoke crystal methamphetamine, and the residue visible inside as the resulting residue.

On cross-examination, defense counsel asked Officer Lim to confirm it was his practice to issue only a warning for violations of "pedestrian rules." Officer Lim responded, "Warning, or citations. I've issued J-walking citations. . . .

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I issue citations if I feel the person doesn't understand what the law means, or they're resistant to what the law means, as an educational way of letting them know that it's not all right to just cross a street or walk on the road whenever you want."

Officer Lim acknowledged that Ngum immediately walked onto the sidewalk after Officer Lim yelled at him, either, "Would you mind walking on the sidewalk, or what are you doing walking on the roadway?" Officer Lim added, "Well, he yelled back at me, I'm just walking. And then he cut across between the cars, and he started walking down the sidewalk. Like he was upset that I was asking him to walk on the sidewalk." Officer Lim agreed that Ngum did not thereafter violate any pedestrian rules.

Defense counsel showed Officer Lim the police report he wrote about the incident. Officer Lim admitted he did not include in his report the fact that he had recognized Ngum's face from the thirty or forty photographs on the board in the squad room. But Officer Lim explained, "That was not my reason for stopping him, based upon the fact that I recognized him. . . . Once I saw the violation, I had made up my mind to stop him. It was just trying to find a place to stop him was my concern." Officer Lim also acknowledged that he did not write about his suspicion that Ngum was casing cars, or about the previous investigations of UEMV in the area he had handled.

After hearing arguments, the court made an oral ruling:

With respect to the finding of facts, the testimony of

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Officer Lim is largely undisputed. So the Court is going to find the facts as represented by the State and in their memorandum, which is consistent with the testimony of Officer Lim, which the Court also finds credible.

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In this case the intrusion was brief in that it was approximately two minutes. It was for the purpose of identifying the individual and determining why the individual was walking on the street and looking into cars, which the officer suspected was in his opinion casing of the cars.

The Court believes, based on the totality of circumstances and the applicable law, the brief intrusion was justified. For that reason the motion will be denied.

On March 11, 2002, the court filed its findings of fact, conclusions of law and order denying Ngum's motion to suppress.

Just before Ngum's jury trial started, the court heard Ngum's February 26, 2002 motion *in limine* seeking exclusion of, *inter alia*, "Any statements by any police officer that in this matter Defendant was arrested for an outstanding warrant for a probation violation in another case[.]" The court decided:

THE COURT: Excuse me. I am prepared to rule. The Court is going to permit the State to present evidence that defendant was arrested for an outstanding warrant. The Court precludes the State from identifying the type of warrant or the basis for the warrant.

[DEFENSE COUNSEL]: Your Honor, could I ask for a cautionary instruction to accompany that? That the jurors are not allowed to use that information against him.

THE COURT: The Court will prepare a limiting instruction and inform the jury that this evidence is being introduced for the purpose of showing why defendant was arrested. And be used for no other purpose.

[DEFENSE COUNSEL]: Thank you, Your Honor.

The motion *in limine* had also requested exclusion of the following:

1. Testimony by Officer Sonny Lim that he thought Mr. Ngum was acting suspiciously by walking on the street instead of on the sidewalk and looking into parked cars.

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2. Any speculation as to why Mr. Ngum might be looking into the cars, e.g., as if he were looking for one with the keys in it or one to steal.

3. Any testimony that Mr. Ngum was in a high crime or high drug use area of Waikiki.

4. Any testimony that Mr. Ngum gave an incorrect spelling of his name to Officer Sonny Lim and that another officer gave Officer Lim the correct spelling.

The court excluded 1, 2 and 3. The court also precluded "reference to numerous automobile break-ins in the area." The court denied the motion as to 4, deciding that the evidence "goes to credibility."

The court gave the jury some preliminary instructions just before opening statements. With respect to the opening statements, the court instructed:

Shortly, you will receive opening statements of the attorneys. You must remember that opening statements are not evidence. It is what the lawyers believe the evidence will show in the case. It is, essentially a preview of the trial. And it is intended merely to assist you in following the evidence.

In his opening statement, the deputy prosecuting attorney (DPA) related what happened after Officer Lim stopped Ngum at the corner of Ena Road and Kalakaua Avenue:

He gives him a name. Randol Ngum. How do you spell that name? N-u-m? That is not how Randol Ngum spells his last name.

Officer Lim does what every police officer does. Once you get the name, date of birth, social security number, he calls it in to say are there outstanding warrants for this person.

That's not the right spelling of the name. He gets nothing.

Meanwhile, the guy already left. In fact, I may have the details mixed up. Maybe he let Mr. Ngum go. He said: You shouldn't be out in the middle of the street, don't do this anymore.

Meantime, it comes back negative. Couple minutes later -- this has all been going on dispatch on the radio -- somebody else calls him and said: I have heard you have a Randol N-u-m. I think there is a warrant. His name is spelled N-g-u-m.

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He checks it. Sure enough, there is a warrant out for Randol Ngum.

Now, the details of this warrant have absolutely nothing to do with this case. And the prosecution is not going to be talking about that at all. Suffice it to say there was a warrant out for Mr. Ngum's arrest. Details are not important. Officer Lim starts looking for him.

At trial, Officer Lim's testimony was in all relevant respects essentially the same as his testimony at the hearing on Ngum's motion to suppress, but compressed consistent with the exclusions mandated by the court's orders *in limine*. Officer Lim's testimony on direct examination, about what happened after he stopped Ngum at the corner of Ena Road and Kalakaua Avenue, went as follows:

A I walked all the way back to my car. And I ran some checks on the name and date of birth to see if I could find anything.

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A It came back negative.

Q Meaning?

A Meaning when they run for warrants they use your name, date of birth, social security number. Basically what it is is to find whether or not you have any warrants. Any outstanding missing person cases, that type of thing.

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Q After dispatch said this was no warrant, what happened next?

A Another officer who was, I guess, familiar with his name said, "It's not spelled that way. It's spelled N-g-u-m." I guess he is familiar with Mr. Ngum.

[DEFENSE COUNSEL]: Objection, Your Honor. I move that last response be stricken.

THE COURT: Sustained. Ladies and gentlemen, the last remark by the officer is stricken.

When the Court strikes an answer, you are to disregard the answer and not consider it in any way in your deliberations in

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this case.

Continue.

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A I ran my checks under the new spelling.

Q Was this with date of birth and social security number?

A Yes. The social security number that I was given and the actual social security number that belonged to Mr. Ngum, the last digit was off from what he gave me to what we actually had on our file.

Q Without going into any details, what was the result of this check, the second check?

A A warrant check came back positive.

Q Once you were informed that there was a positive warrant for Mr. Ngum, what did you do?

A Well, I informed dispatch. They asked if I had the body, if I had the person. And I told them no, I let him go. So the next thing I did was I drove around looking for him. Because now I knew who he was and I knew there was an outstanding warrant. So I drove around. Finally, I caught up with him.

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A Basically, I turned on my lights. And, you know, stopped him. And again, I felt harassed. But I just informed him why I stopped him. That you have a possible outstanding warrant.

[DEFENSE COUNSEL]: Objection, Your Honor. May we approach?

THE COURT: Approach the bench.

(BENCH DISCUSSION:)

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[DEFENSE COUNSEL]: Your Honor, I know the Court ruled that it could be explained why Mr. Ngum was stopped in terms of a warrant. But the prosecutor has used the word warrant in his opening statement three times. This witness said warrant at least ten times. Your Honor, at this point there is joint emphasizing of this warrant to prejudicial extent. Not only that, but this police officer has talked about another police officer knowing Mr. Ngum. And at this time I am going to move for a mistrial.

[DPA]: With respect to the last issue, Your Honor, a cautionary instruction was given. So I believe it was cured. I don't believe what occurred was a manifest necessity for a mistrial.

With respect to the warrant, I will go to the next area. As we discussed in motions in limine, there will be a cautionary instruction given. If not now, then in the jury instructions.

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THE COURT: The Court allowed introduction of the evidence of the warrant for the purpose of showing a warrant was initiated which resulted in the search which resulted in the evidence which is the basis for this charge. The Court intended to give a limiting instruction to the jury at the point where the State introduced evidence that the defendant was arrested without a warrant. [The DPA] is taking some time to get there. So I am going to instruct [the DPA] to move on and get to the arrest.

At this time I am going to deny the motion for mistrial.

(OPEN COURTROOM:)

Q (By [the DPA]) Officer Lim, you were at Kalakaua and, I think, Saratoga, around there?

A Yes.

Q Did you arrest Mr. Ngum?

A After confirming the warrant, yes.

[DEFENSE COUNSEL]: Same objection, Your Honor.

THE COURT: Overruled.

Q (By [the DPA]) What, if anything, did you do after he was arrested?

A Well, I informed him he was under arrest, I placed him in handcuffs. And I proceeded to do a search for weapons and means of escape.

THE COURT: Excuse me. I have an instruction for the jury. Ladies and gentlemen, you have heard evidence of a warrant. This evidence has been introduced for the limited purpose of showing why the defendant was initially arrested. When you consider this evidence, you must limit your consideration to this purpose only and use it for no other purpose. In other words, you are not to speculate about this warrant.

[DPA]: Thank you, Your Honor.

The other State witnesses testified about the cell block search of Ngum during which the pipe was recovered; the chain of custody of the pipe to the police criminalist; and the criminalist's analysis of the 12 milligrams of residue he removed from the pipe, which found it contained methamphetamine.

Ngum was the only witness in his defense. He testified, in brief essence, that he is a spiritual healer and

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was so employed, early in the morning of December 23, 2001, in curing a crystal methamphetamine addict of his habit. Ngum would not reveal the addict's identity, because to do so would be a breach of confidence akin to a Catholic priest's revelation of a penitent's confession. At the end of the session, Ngum gave the addict a used bicycle he had gotten as a gift, and in return the addict gave Ngum his pipe, which, presumably, he would no longer need. Ngum planned to throw the pipe away after he left the addict's apartment, but far enough away so that the addict could not see where he discarded it. Ngum also asked to borrow the addict's pants, because Ngum's shorts were dirty. The addict placed the pipe in the left knee pocket of the pants, which Ngum donned before going on his way to his eventual encounter with Officer Lim. Ngum remembered that at the time of the encounter, he was looking for some money he had lost on his way to the session, between the cars parked on Hobron Lane. By that time, he had forgotten the pipe was in the pants pocket.

The court's final instructions to the jury included the following:

You must consider only the evidence which has been presented to you in this case and such inferences therefrom as may be justified by reason and common sense. . . .

. . . .

Statements or remarks made by counsel are not evidence. You should consider their arguments to you, but you are not bound by their recollections or interpretations of the evidence. . . .

. . . .

During the trial I told you that certain evidence was allowed into this trial for a particular and limited purpose.

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When you consider that evidence, you must limit your consideration to that purpose.

The jury returned a verdict of guilty as charged on both counts of the complaint. An amended judgment was entered on July 5, 2002. Ngum filed a timely notice of appeal on July 24, 2002.

II. Discussion.

A. *The Motion to Suppress.*

Ngum first contends the court erred in denying his January 29, 2002 motion to suppress, because Officer Lim lacked the requisite reasonable suspicion for an investigative stop.

We apply the following standard in reviewing a trial court's denial of a motion to suppress evidence:

Appellate review of factual determinations made by the trial court deciding pretrial motions in a criminal case is governed by the clearly erroneous standard. A finding of fact is clearly erroneous when (1) the record lacks substantial evidence to support the finding, or (2) despite substantial evidence in support of the finding, the appellate court is left with a definite and firm conviction that a mistake has been made. The circuit court's conclusions of law are reviewed under the right/wrong standard. Furthermore . . . the proponent of a motion to suppress has the burden of establishing not only that the evidence sought to be excluded was unlawfully secured, but also, that his own Fourth Amendment rights were violated by the search and seizure sought to be challenged. The proponent of the motion to suppress must satisfy this burden of proof by a preponderance of the evidence.

State v. Balberdi, 90 Hawai'i 16, 20-21, 975 P.2d 773, 777-78 (App. 1999) (citing State v. Anderson, 84 Hawai'i 462, 466-67, 935 P.2d 1007, 1011-12 (1997)).

We review a ruling on a motion to suppress *de novo* in order to determine whether it was right or wrong as a matter of law. State v. Kauhi, 86 Hawai'i 195, 197, 948 P.2d 1036, 1038 (1997).

State v. Ramos, 93 Hawai'i 502, 507, 6 P.3d 374, 379 (App. 2000) (ellipsis in the original).

"In certain situations, the police may temporarily detain a person without a warrant, in what is known as an investigative stop[,] "id. at 507-8, 6 P.3d at 379-80, if the police have reasonable suspicion to do so. In other words,

To justify an investigative stop, short of arrest based on probable cause, the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion. . . . The ultimate test in these situations must be whether from these facts, measured by an objective standard, a [person] of reasonable caution would be warranted in believing that criminal activity was afoot and that the action taken was appropriate.

State v. Bolosan, 78 Hawai'i 86, 92, 890 P.2d 673, 679 (1995)
(internal quotation marks and citations omitted).

Ramos, 93 Hawai'i at 508, 6 P.3d at 380 (ellipsis and brackets in the original).

Ngum first argues that three of the court's findings of fact (FsOF or FOF, singular) on the motion to suppress are clearly erroneous. The first two, FsOF 4 and 7, need not detain us, because even if clearly erroneous they are immaterial in this regard. The third, FOF 8, reads as follows:

8. When Defendant looked at Officer Lim, Officer Lim recognized his face as being the same as a mug shot photograph of an auto break-in suspect displayed on the police squadroom wall.

FOF 8 is the linchpin of Ngum's assertion of error, because Ngum concedes on appeal that, if FOF 8 is not clearly erroneous, Officer Lim had the requisite reasonable suspicion for the investigative stop:

The problem in the instant case is that when the arresting officer testified at the hearing on the motion to suppress he embellished his original police report version of the seizure of Ngum by adding a critical factor that the defense concedes would support reasonable suspicion when combined with the fact that Ngum

was looking into parked cars. The defense argument of insufficient evidence to support reasonable suspicion depends on the fact that Ngum was unknown to Officer Lim. Here the defense argues that the court clearly erred in crediting Officer Lim's testimony that he recognized Ngum's face as being the same as a mug shot photograph of an auto break-in suspect displayed on the police squadroom wall.

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If Officer Lim actually recognized Ngum's face he certainly would have so stated in his report. The omission of recognition of Ngum's face from the report is an impossibly glaring one. It is comparable to a police report that fails to mention that a suspect made a 'spontaneous utterance' admitting to the crime. It simply wouldn't happen.

Opening Brief at 20-22.

Clearly, Ngum's essential argument is that the court erred in finding Officer Lim's testimony credible in this respect. However, at the hearing on Ngum's motion to suppress, defense counsel cross-examined Officer Lim quite extensively about the various matters he mentioned on direct examination but did not include in his police report, including first the matter of Ngum's mug shot. And, as Ngum acknowledges, it is well established that an appellate court will not disturb a lower court's determination of credibility, see State v. Ferrer, 95 Hawai'i 409, 422, 23 P.3d 744, 757 (App. 2001) ("we give full play to the right of the fact finder to determine credibility, weigh the evidence, and draw justifiable inferences of fact" (quoting State v. Timoteo, 87 Hawai'i 108, 113, 952 P.2d 865, 870 (1997))), which in this case was in favor of Officer Lim. Hence, Ngum's essential argument must fail. Thereupon we conclude, as Ngum thereupon concedes, there was reasonable suspicion to support the investigative stop.

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In addition, and in the alternative, we agree with the State's argument that Officer Lim was authorized to stop Ngum and cite him for walking in the road. Hawaii Revised Statutes (HRS) § 291C-76(a) (1993) ("Where sidewalks are provided it shall be unlawful for any pedestrian to walk along and upon an adjacent roadway, bicycle lane, or bicycle path."); HRS § 291C-161(a) (Supp. 2003);⁶ HRS § 291C-165(a) (Supp. 2003);⁷ HRS § 803-5(a) (1993); HRS § 803-6 (1993).⁸ See also State v. Barros, 98

⁶ HRS § 291C-161(a) (Supp. 2003) provides in pertinent part that, "It is a violation for any person to violate any of the provision of this chapter[.]"

⁷ HRS § 291C-165(a) (Supp. 2003) provides in relevant part that, "There shall be provided for use by authorized police officers, a form of summons or citation for use in citing violators of those traffic laws which do not mandate the physical arrest of such violators."

⁸ HRS § 803-5(a) (1993) provides that, "A police officer or other officer of justice, may, without warrant, arrest and detain for examination any person when the officer has probable cause to believe that such person has committed any offense, whether in the officer's presence or otherwise." HRS §§ 803-6(b) & -6(c) (1993) provide:

(b) In any case in which it is lawful for a police officer to arrest a person without a warrant for a misdemeanor, petty misdemeanor or violation, the police officer may, but need not, issue a citation in lieu of [arrest], if the police officer finds and is reasonably satisfied that the person:

- (1) Will appear in court at the time designated;
 - (2) Has no outstanding arrest warrants which would justify the person's detention or give indication that the person might fail to appear in court; and
 - (3) That the offense is of such nature that there will be no further police contact on or about the date in question, or in the immediate future.
- (c) The citation shall contain:
- (1) Name and current address of offender;
 - (2) Social security number;
 - (3) Description of offender;

(continued...)

Hawai'i 337, 342, 48 P.3d 584, 589 (2002) ("In this case, Officer Hood was justified in stopping Barros because Officer Hood had observed Barros jaywalking -- conduct that is prohibited under HRS § 291C-73 (1993). As Barros committed the offense in Officer Hood's presence, there appears to be no doubt that Officer Hood could lawfully stop Barros to cite him for the offense."
(Footnotes omitted.)).

In sum, the court did not err in denying Ngum's motion to suppress.

B. Motion for Mistrial.

For his other point of error on appeal, Ngum contends the court abused its discretion in denying his oral motion for a mistrial, because the DPA

created an insurmountable atmosphere of prejudice by overemphasizing the fact that Ngum had an outstanding warrant for his arrest, in violation of the spirit and purpose [of] the Court's ruling on the defense's motion in limine and defendant's due process right to a fair trial.

Opening Brief at 14. We disagree.

⁸(...continued)

- (4) Nature of the offense;
- (5) Time and date;
- (6) Notice of time and date for court appearance;
- (7) Signature of officer (badge);
- (8) Signature of offender agreeing to court appearance;
- (9) Remarks; and
- (10) Notice-you are hereby directed to appear at the time and place designated above to stand trial for the offense indicated. A failure to obey this citation may result in a fine or imprisonment, or both.

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On appeal, a denial of a motion for mistrial will not be disturbed absent a showing of an abuse of discretion by the trial judge. State v. Palabay, 9 Haw. App. 414, 431, 844 P.2d 1, 10 (1992), cert. denied, 74 Haw. 652, 849 P.2d 81 (1993). "The trial court abuses its discretion when it clearly exceeds the bounds of reason or disregards rules or principles of law or practice to the substantial detriment of a party litigant." State v. Furutani, 76 Hawai'i 172, 179, 873 P.2d 51, 58 (1994) (citations omitted).

State v. Napulou, 85 Hawai'i 49, 55, 936 P.2d 1297, 1303 (App. 1997).

First, the "spirit and purpose" of the court's order *in limine* notwithstanding, the fact remains that the DPA did not transgress the terms of the order by mentioning or eliciting the type or basis of the warrant.

Second, our review of the DPA's opening statement and his direct examination of Officer Lim does not leave us with the impression that the fact of the warrant was therein prejudicially overemphasized. On the contrary, the various mentions of the warrant appear to be, in context, quite innocuous and in no manner untoward. They did not, at any rate, "so prejudice[] Defendant's right to a fair and impartial trial, that his motion for mistrial was improperly denied and his conviction[s] should be vacated." Palabay, 9 Haw. App. at 431, 844 P.2d at 10.

Finally, we are confident that any potential prejudice was precluded by the court's various jury instructions, both general and specific, and temporally proximate and remote, detailed above. We presume the jury followed these instructions. State v. Kupihea, 80 Hawai'i 307, 317-18, 909 P.2d 1122, 1132-33 (1996) ("this court has repeatedly held that improper comments by

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a prosecutor can be cured by the court's instructions to the jury and that it will be presumed that the jury adhered to the court's instructions" (citations omitted)). Indeed,

[i]t is well-established, . . . that generally relevant jury instructions can cure improper arguments by a prosecutor; especially where, as here, such instructions were given repeatedly. See, e.g., Kupihea, 80 Hawai'i at 317-18, 909 P.2d at 1132-33 (repeated instructions to the jury that remarks by counsel are not evidence were sufficient to cure a specific instance of arguably improper prosecutorial argument); State v. Valdivia, 95 Hawai'i 465, 481, 24 P.3d 661, 677 (2001) (where no specific curative instruction was given at the time the prosecutor made improper remarks, the misconduct was nevertheless harmless beyond a reasonable doubt because "the court did generally instruct the jury no less than three times that the statements and arguments of counsel were not evidence and were not to be considered as such during the jury's deliberations[,] and the evidence against the defendant was not "so weak . . . as to weigh in favor of finding the misconduct prejudicially harmful").

State v. Meyer, 99 Hawai'i 168, 172-73, 53 P.3d 307, 311-12 (App. 2002) (ellipsis and some brackets in the original).

We conclude the court did not abuse its discretion in denying Ngum's oral motion for a mistrial.

III. Conclusion.

The court's July 5, 2002 amended judgment is affirmed.

DATED: Honolulu, Hawai'i, August 25, 2004.

On the briefs:

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Chief Judge

Associate Judge

Associate Judge